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Title: LAKE CITY ARMY AMMUNITION PLANT (NORTHWEST LAGOON), Independence, Missouri

Subject: Region 7, VII

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
AND THE
STATE OF MISSOURI
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

IN THE MATTER OF:	)	
	)	
The U.S. Lake City Army Ammunition Plant, Independence, Missouri	)	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
	)	
	)	Administrative Docket Number: VII-89-F-0019

PRELIMINARY STATEMENT

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

A. The U.S. Environmental Protection Agency (U.S. EPA), Region 7, enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA/SARA or CERCLA) and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act

(RCRA), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA/HSWA or RCRA) and Executive Order 12580;

B. U.S. EPA, Region VII, enters into those portions of this Agreement that relate to operable unit remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA and Executive Order 12580;

C. the Department of the Army (DA) enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2701 et seq.;

D. DA enters into those portions of this Agreement that relate to operable unit remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA/SARA, Sections 6001, 3008(h) and 3004(u) and (V) of RCRA, Executive Order 12580 and the DERP.

E. The State of Missouri, Department of Natural Resources (MDNR) enters into those portions of this Agreement that relate to the RI/FS pursuant to Sections 120 and 121 of CERCLA/SARA, 42 U.S.C. §§ 9620 and 9621 and Sections 3006 and 6001 of RCRA, 42 U.S.C. § 6901 et seq., as adopted in Section 260.350 et seq. at pertinent parts, and Title 10 of the Code of State Regulations, Chapter 25 (hereinafter "10 CSR 25") and Chapter 80 (hereinafter

"10 CSR 80");

F. the State of Missouri, Department of Natural Resources (MDNR) enters into those portions of this Agreement that relate to operable unit remedial actions and final remedial actions pursuant to Sections 120(f) and 121(f) of CERCLA/SARA, 42 U.S.C. §§ 9620(f) and 9621(f) and Section 3006 of RCRA, 42 U.S.C. § 6925 as adopted in Section 260.350 et seq. of the Revised Statutes of the State of Missouri and Title 10 of the Code of State Regulations (CSR), Chapters 25 and 80.

II. PARTIES

The Parties to this Agreement are U.S. EPA, Region VII; the State of Missouri and the Department of the Army. The terms of this Agreement shall apply to and be binding upon the signatories to this Agreement and upon their successors and assigns. The undersigned representative of each party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally that party to it. Each party shall provide a copy of this Agreement to all primary contractors retained to perform work pursuant to this Agreement. DA shall provide a copy of this Agreement to the present owner and any subsequent owners of any property upon which any work under this Agreement is performed, if not owned by DA or the United States.

III. DEFINITIONS

Except as otherwise explicitly stated herein, terms used in this Agreement which are defined in CERCLA shall have the meaning

as defined in CERCLA. The following definitions shall apply for purposes of this Agreement:

A. "Agreement" means this Federal Facility Agreement, all attachments to this Agreement and all reports, plans, notices, and other documents developed pursuant to this Agreement.

B. "ARAR" means applicable or relevant and appropriate standard, requirement, criteria, or limitation within the meaning of Section 121(d)(2)(A) of CERCLA.

C. "Authorized representative" means a person designated to act on behalf of a Party to this agreement for a specific purpose, including inter alia, if so designated, contractors retained to perform work at or relating to the Site.

D. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

E. "DA" means the United States Department of the Army, its employees and authorized representatives.

F. "Days" means calendar days, unless business days are specified. Any Submittal, Written Notice of Position or Written Statement of Dispute that, under the terms of this Agreement, would be due on a Saturday, Sunday or holiday shall be due on the following business day.

G. "Emergency removals" means a removal action taken because of an imminent and substantial endangerment to human health or the environment which requires implementation of a response

action in such a timely manner that consultation with EPA and MDNR would be impractical.

H. "EPA" means the United States Environmental Protection Agency, its employees and authorized representatives.

I. "Feasibility Study" or "FS" means that study which fully evaluates and develops remedial action alternatives to prevent or mitigate the migration or the release of hazardous substances, pollutants or contaminants at and from the Site.

J. "MDNR" means the Missouri Department of Natural Resources, its employees and authorized representatives.

K. "National Contingency Plan" or "NCP" means the implementing regulations for CERCLA found in Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

L. "Operable Unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems.

M. "Remedial Investigation" or "RI" means that investigation conducted to fully determine the nature and extent of release or threat of release of hazardous substances, pollutants or contaminants and to gather necessary data to support the Feasibility Study and Endangerment Assessment.

N. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616.

O. "Site" means the Lake City Army Ammunition Plant and any areas contaminated by the migration of hazardous substances from

the Lake City Army Ammunition Plant.

P. "Submittal" means each document, report, schedule, deliverable, work plan or other item to be submitted to EPA or MDNR pursuant to this Agreement.

Q. "Timetables and Deadlines" means schedules or the time limitations contained therein that are applicable to a discrete and significant portion of the RI, FS, Remedial Design, and Remedial Action processes and specifically established under the terms of this Agreement.

R. "Written Notice of Position" means a written statement by a Party of its position with respect to any matter about which any other Party may initiate dispute resolution pursuant to Part XI of this Agreement.

IV. PURPOSE

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;

2. establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy; and,

3. facilitate cooperation, exchange of information and participation of the Parties in such actions.

B. Specifically, the purposes of this Agreement are to:

1. Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA.

2. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA/SARA.

3. Identify Operable Unit Remedial Action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. These alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of Operable Unit Remedial Actions to U.S. EPA pursuant to CERCLA/SARA. This process is designed to promote cooperation among the Parties in identifying Operable Unit Remedial Action alternatives prior to selection of final Operable Unit Remedial Actions.

4. Implement the selected Operable Unit and final remedial action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA for an interagency

agreement between U.S. EPA and the DA.

5. Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein.

6. Coordinate response actions at the Site with the mission and support activities at LCAAP.

7. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

V. INTENTION AND SCOPE

It is the intention of the Parties that:

1. Except as otherwise provided in paragraph VI.D.1. of this Agreement, this Agreement shall apply to all releases and threats of release of hazardous substances, pollutants or contaminants at or from LCAAP, including such releases and threats of release at or from solid waste management units at LCAAP, to which CERCLA and RCRA or CERCLA alone applies.

VI. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the Lake City Army Ammunition Plant's CERCLA response obligations and RCRA corrective action obligations which relate to the release of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement shall be deemed to achieve compliance with CERCLA, 42 U.S.C. § 9601 et seg.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42

U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that on-going hazardous waste management activities at the Lake City Army Ammunition Plant may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Lake City Army Ammunition Plant for on-going hazardous waste management activities at the Site, EPA and MDNR shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of

this Agreement into such permit. The Parties intend that the judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

D. With regard to the specific RCRA compliance issues at LCAAP, it is the intention of the Parties that:

1. The Federal Facility Compliance Agreement entered into by DA and EPA on December 22, 1988, remain in full force and effect;

2. groundwater remedial action, selected in accordance with § 121 of CERCLA, shall satisfy any groundwater corrective action requirements for RCRA regulated units at LCAAP; and

3. for the following units, remedial action which is selected and implemented in accordance with this Agreement and which addresses the applicable substantive closure and post-closure requirements found at 10 C.S.R. 25-7.264, 7.265 and 7.270, including but not limited to groundwater monitoring and remediation, shall constitute DA's compliance with those requirements for those units:

a. mercurous nitrate storage area near Building 60;

b. oil-solvent storage area near the sanitary landfill;

c. paint-solvent storage area near the sanitary landfill.

VII. FINDINGS OF FACT

This paragraph contains findings of fact determined by U.S. EPA and MDNR as the basis for this Agreement. None of these

findings are admissions by LCAAP or the DA for any purpose, including the extent of LCAAP compliance with applicable federal or state environmental laws, nor are they in any other way legally binding on any Party.

A. The Lake City Army Ammunition Plant (LCAAP) is a government owned contractor operated (GOCO) facility that has been operated under contract with the Olin Corporation since November 1985. It is part of the U.S. Army Armament, Munitions, and Chemical Command. The facility has operated continuously since 1941, except for a 5-year period between World War II and the Korean War. The facility was operated under contract with Remington Arms Company from 1941 to 1985.

B. Onsite environmental programs have included wastewater treatment; hazardous waste generation, storage, treatment and disposal; solid waste and sludge disposal; PCB storage; pesticide management; incineration/demilitarization; and open burning/open detonation. Chemicals used onsite in production include soaps, detergents, bleaches, hydrochloric acid, sulfuric acid, nitric acid, explosive compounds, petroleum and lubricating oils, trichloroethane, trichloroethylene, and other cleaning solvents.

C. Manufacturing operations have included: cartridge case drawing, annealing, pickling, and forming; case priming; and cartridge loading and assembly. During 1960 to 1961, a 20-mm spotter-tracer projectile was manufactured from depleted uranium in Building 3A. During 1974 to 1976, a limited amount of penetrators were manufactured from depleted uranium in Building 12A under a research and development operation. Principal wastes

from the manufacturing areas have included soluble oils, alkali cleaners, and leaked hydraulic oil from extrusion, soaps, detergents, hydrochloric acid, sulfuric acid, nitric acid, explosive compounds, phosphate cleaners, petroleum and lubricating oils, trichloroethane, trichloroethylene, and other cleaning solvents.

D. During the early period of operation of LCAAP, almost all waste treatment and disposal was onsite. Previous waste disposal practices included burning, onsite burial, discharge to lagoons and direct discharge to surface waters onsite. These disposal practices were followed for many years. Based on presently available information, 73 past disposal and potential contaminant release areas have been identified; this number may vary upward or downward as the RI/FS progresses.

E. Many studies concerning waste disposal have been conducted at LCAAP by a variety of agencies and contractors. In January 1989, EA Engineering Science and Technology, Inc. published the results of a Preliminary Assessment/Site Investigation (PA/SI) conducted for the U.S. Army Toxic and Hazardous Materials Agency. The PA/SI investigation constituted the most comprehensive review of solid waste management units at LCAAP to that date. The results of the PA/SI include the identification of the following contaminants, inter alia, in groundwater samples at the Site:

Contaminant	Maximum Concentration
Cadmium	12.5 ug/l
Lead	>20 ug/l
HMX	18 ug/l
2,4-Dinitrotoluene	6.2 ug/l

Trichloroethylene	24,000 ug/l
Vinyl chloride	1,000 ug/l
1,1-Dichloroethylene	2,000 ug/l
trans-1,2-Dichloroethylene	130,000 ug/l
1,1,1-Trichloroethane	2400 ug/l
Toluene	4000 ug/l
Tetrachloroethylene	800 ug/l

F. The concentrations above represent the highest levels detected during the PA/SI. These data indicate that releases of hazardous substances have occurred. A risk assessment to evaluate the potential threat will be conducted as part of the ongoing Remedial Investigation.

G. The following hazardous waste storage units were in operation after November 1980, are now no longer in operation, but have not been closed in accordance with applicable RCRA closure requirements. Each of these units has been impacted by hazardous substances released from other areas at the Site such that complete or total closure of these units prior to or in the absence of remediation of the other sources of hazardous substances is impractical. These units are as follows:

1. The Mercurous Nitrate Storage unit (Site T1 in the January 1989 PA/SI report) is located adjacent to Building 60. It consists of five in-ground concrete tanks which were used for the treatment of cyanide wastes in the 1950's. The tanks were later used for the treatment of mercurous nitrate, which was generated by testing procedures for small arms cartridges. This unit is located adjacent to a zinc cyanide sludge drying bed, which was used for the treatment of plating wastes from the late 1950's to the early 1960's. In 1983, both the mercurous nitrate storage unit and the zinc cyanide sludge drying bed were inundat-

ed by flood waters, with contamination of surrounding soils by commingled wastes from both sites.

2. The Oil and Solvent Storage Area (Site T2 in the January 1989 PA/SI report) is an area approximately 40 feet by 75 feet located within the southwest quadrant of the old landfill (Site L10 in the PA/SI report). This area consisted of above-ground storage tanks which, from early 1980 until approximately December 1982, were used to store waste solvents and waste recyclable oil, including hazardous waste listed pursuant to RCRA as D001. Hazardous constituents associated with this area include trichloroethylene and 1,1,1-trichloroethane. The tanks were removed from this area in 1983. From 1971 to 1979, the landfill was used for the disposal of wood and paper, as well as waste contaminated with explosives and solvents. Numerous leachate seeps exist throughout the landfill. The DA reports that leachate from the old sanitary landfill has contaminated the soil within the oil and solvent storage area;

3. The Paint and Solvent Storage Area (Site T3 in the January 1989 PA/SI report) is an area approximately 12 feet by 40 feet located adjacent to the northeast boundary of the old sanitary landfill (Site L10 in the PA/SI report). From early 1980 until December 1982, this area was used as a drum storage area, in which paint waste and waste solvents were stored in 55-gallon drums on pallets prior to offsite disposal. It is reported to have been constructed with a clay bottom and berms with gravel covering. Leachate from the old sanitary landfill is believed to

have contaminated the soil within this area.

VIII. DETERMINATIONS

This paragraph contains determinations of law made solely by the U.S. EPA and MDNR. As with the Findings of Fact, infra, they are not admissions by LCAAP or the DA for any purpose.

A. The Lake City Army Ammunition Plant is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

B. hazardous substances and pollutants or contaminants within the meaning Sections 101(14) and 101(33) of CERCLA have been disposed of at LCAAP;

C. there is a release or threatened release of hazardous substances and pollutants or contaminants into the environment at the Site as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

D. the Site is a federal facility within the meaning of Section 120 of CERCLA, 42 U.S.C. § 9620.

E. The actions required to be taken pursuant to this Agreement are necessary to protect the public health and welfare and the environment and are consistent with the National Contingency Plan; and

F. the schedule for completing the actions required by this Agreement complies with the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e).

IX. WORK TO BE PERFORMED

It is hereby agreed by the Parties that DA shall conduct each of the following activities as set forth below:

A. Remedial Investigation and Feasibility Study

1. DA shall conduct in compliance with the schedule set forth in Part XXIX of this Agreement a Remedial Investigation and Feasibility Study in accordance with the guidelines set forth in the document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", OSWER Directive 9335.3-01 (March 1988). The Remedial Investigation shall include, inter alia the design, and implementation of a monitoring program to define the extent and nature of soil contamination, surface water contamination, groundwater contamination, and air contamination if any, at the Site and the extent and nature of releases of hazardous substances from the Site.

2. In accordance with Parts X and XXIX of this Agreement, DA shall submit to EPA and MDNR for review and approval RI and FS Work Plans.

3. DA shall implement the RI and FS in accordance with the schedules set forth in Part XXIX of this Agreement.

4. The Parties agree that final Site cleanup level criteria will only be determined following completion of a Site-wide Risk Assessment to be prepared by the DA as part of the Feasibility Study. The RI shall be coordinated with the Feasibility Study such that both activities are completed in a timely and cost effective manner.

B. Operable Unit Remedial Actions

1. In accordance with Part XXIX of this Agreement, DA shall propose deadlines for the completion of Operable Unit Work

Plans for any Operable Unit remedial actions currently anticipated. These workplans shall be reviewed in accordance with Part X of this Agreement.

2. All Operable Unit remedial actions undertaken pursuant to this Agreement shall comply with all NCP requirements and EPA guidelines governing such actions.

3. All requirements for Remedial Action Selection and Implementation pursuant to this Agreement shall apply to the selection and implementation of Operable Unit remedial actions.

C. Remedial Action Selection

1. Upon approval of a FS Report by EPA and MDNR, the DA shall, after consultation with EPA and MDNR pursuant to Part X of this Agreement, publish the proposed plan for public review and comment in accordance with the public participation requirements of Part XXVII of this Agreement.

2. Within sixty (60) days of the completion of the public comment period on the proposed plan, DA shall submit its proposed Record of Decision (ROD) to EPA. The EPA Administrator, in consultation with the DA and MDNR pursuant to Part X of this Agreement, shall make final selection of the remedial action for the Site. The remedial action selected by the EPA Administrator shall be final and is not subject to dispute by the DA.

3. Within fifteen (15) months of receipt of written notice of final approval of the ROD by EPA, DA shall commence substantial continuous physical onsite remedial action at the Site.

4. DA shall implement the remedial action in accord-

ance with the provisions, time schedule, standards and specifications set forth in the approved Remedial Action Work Plan.

5. Before commencement of any remedial action, DA shall provide for public participation in accordance with Part XXVII of this Agreement.

D. Removal Actions

1. Any removal actions undertaken by the DA at the Site shall be conducted in a manner consistent with CERCLA and the NCP, including provisions for timely notice and consultation with EPA and MDNR.

2. For all removal actions except emergency removals, prior to undertaking the action, DA shall advise EPA and MDNR, in writing, as to the basis for the action, the nature of the action, the expected time period during which the action will be implemented, and the impact, if any, on any remedial action contemplated at the Site. For emergency removals, DA shall provide as much advance notice as the circumstances leading to the removal action allow.

3. Prior to the initiation of any removal action which is not an emergency removal, the DA shall provide EPA and MDNR with an adequate opportunity for timely review and comment on any such proposed removal action. Following consideration of EPA and MDNR comments, the DA shall provide to EPA and MDNR a written response to those comments, as soon as practicable. DA determination as to the necessity for taking emergency removal action shall not be subject to Parts XI and XXXI of this Agreement.

4. Upon completion of a removal action, DA shall provide to EPA and MDNR, in writing, notification of the completion of the removal action and a description of the action taken.

5. Nothing in this Agreement shall alter the DA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

X. CONSULTATION WITH U.S. EPA and MDNR

A. Applicability:

The provisions of this Part establish the procedures that shall be used by the DA, U.S. EPA, and MDNR to provide the Parties with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA and 10 U.S.C. § 2705, the DA will normally be responsible for issuing primary and secondary documents to U.S. EPA and MDNR. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and MDNR in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

B. General Process for RI/FS and RD/RA documents:

1. Primary documents include those reports that are

major, discrete portions of RI/FS or RD/RA activities. Primary documents are initially issued by the DA in draft subject to review and comment by U.S. EPA and MDNR. Following receipt of comments on a particular draft primary document, the DA will respond in writing to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document 30 days after issuance, if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the DA in draft subject to review and comment by U.S. EPA and MDNR. Although the DA will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The following documents have been submitted and accepted:

a. Remedial Investigation QA/QC Plan, dated January 1988

b. Remedial Investigation Technical Plan, dated May 1988

c. Community Relations Plan, dated September 1988

2. The DA shall complete and transmit draft reports for the following primary documents to U.S. EPA and MDNR for review and comment in accordance with the provisions of this Part:

a. Conceptual Program Plan

b. Remedial Investigation Work Plan, including Sampling and Analysis Plan and QAPP

c. Remedial Investigation Report, including a Risk Assessment

d. Feasibility Study Work Plan

e. Feasibility Study Report

f. Proposed Plan

g. Record of Decision

h. Operable Unit Work Plans and Reports, including the Northeast Corner (Areas 11, 16, 17, and 18 in the Remedial Investigation Technical Plan) Operable Unit Workplan and Report, and the Area 9 (mercurous nitrate storage area and zinc cyanide sludge drying bed) Operable Unit Workplan and Report

i. Remedial Design

j. Remedial Action Work Plan

3. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The DA shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XXIX of this Agreement.

D. Secondary Documents:

1. The DA shall complete and transmit draft reports for the following secondary documents to U.S. EPA and MDNR for review and comment in accordance with the provisions of this Part:

a. Operable Unit Remedial Action Objectives/Data Quality Objectives

b. Site Characterization Summary

c. Initial Screening of Alternatives

d. Detailed Analysis of Alternatives

e. Post-screening Investigation Work Plan

f. Treatability Studies (if necessary)

g. Sampling and Data Results, Including Results from All Sampling of Drinking Water Supply Wells and Systems

h. Groundwater Modeling Report

2. Although U.S. EPA and MDNR may comment on the draft report for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXIX of this Agreement.

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every 30 days, except as otherwise agreed by the Parties, to review and

discuss the progress of work being performed at the site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. MDNR shall identify all potential State ARAR's as early in the remedial process as possible consistent with the requirements of CERCLA Section 121(d)(2)(A)(ii) and the NCP. The DA shall consider any written interpretations of ARARs provided by the State. Draft ARAR determinations shall be prepared by the DA in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by U.S. EPA, which is not inconsistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined

throughout the RI/FS process until a ROD is issued.

G. Review and Comment on Draft Reports:

1. The DA shall complete and transmit each draft primary report to U.S. EPA and MDNR on or before the corresponding deadline established for the issuance of the report. The DA shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XXIX of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 45-day period for review and comment. Review of any document by the U.S. EPA and MDNR may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the U.S. EPA and MDNR. Comments by the U.S. EPA and MDNR shall be provided with adequate specificity so that the DA may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the DA, the U.S. EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA or MDNR may extend the 45-day comment period for an additional 20 days by written notice to the DA prior to the end of the 45-day period. On or before the close of the comment period, U.S. EPA and MDNR shall transmit their writ-

ten comments to the DA.

3. Representatives of the DA shall make themselves readily available to U.S. EPA and MDNR during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the DA on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, U.S. EPA and MDNR shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA and MDNR do object, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the DA shall give full consideration to all written comments on the draft report submitted during the comment period. Within 30 days of the close of the comment period on a draft secondary report, the DA shall transmit to U.S. EPA and MDNR its written response to comments received within the comment period. Within 30 days of the close of the comment period on a draft primary report, the DA shall transmit to U.S. EPA and MDNR a draft final primary report, which shall include the DA's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the DA, it shall be the product of consensus to the maximum extent possible.

6. The DA may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to U.S. EPA and MDNR. In appropriate circumstances, this time period may be further extended in accordance with Part XII hereof.

H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XI.

2. When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Part XI regarding dispute resolution.

I. Finalization of Reports:

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the DA's position be sustained. If the DA's determination is not sustained in the dispute resolution process, the DA shall prepare, within not more than 35 days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XII hereof.

J. Subsequent Modifications of Final Reports:

Following finalization of any primary report pursuant to

Paragraph I above, U.S. EPA, MDNR, or the DA may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Paragraphs 1 and 2 below.

1. U.S. EPA, MDNR, or the DA may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. U.S. EPA, MDNR, or the DA may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, either U.S. EPA, MDNR, or the DA may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in this Subpart shall alter U.S. EPA's or MDNR's ability to request the performance of additional work which was not contemplated by this Agreement. The DA's obligation to perform such work must be established by either a modifi-

cation of a report or document or by amendment to this Agreement.

XI. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Part X (Consultation) of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

B. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. The DRC will serve as a forum for resolution of disputes

for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region 7. The DA's designated member is the Commander, LCAAP. The MDNR designated representative is the Director of the Division of Environmental Quality. Written nctice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVIII.

D. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region VII. The MDNR representative on the SEC is the Director of the Missouri Department of Natural Resources. The DA's representative on the SEC is the Deputy Assistant Secre-

tary of the Army (Environment, Safety and Occupational Health) OASA (I & L). The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. The DA or MDNR may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that neither the DA nor MDNR elect to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the DA and MDNR shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the MDNR or DA Secretariat Representative to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the DA and MDNR with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. The pendency of any dispute under this Part shall not

affect the DA's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region VII or the MDNR Director of the Division of Environmental Quality requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's or MDNR's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA and MDNR shall consult with the DA prior to initiating a work stoppage request. After stoppage of work, if the DA believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the DA may meet with the EPA Division Director and MDNR Director of the Division of Environmental Quality to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be

subjected to formal dispute resolution. Such dispute may be brought directly to the either the DRC or the SEC, at the discretion of the DA or MDNR.

I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the DA shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

J. Resolution of the dispute pursuant to this Part of the Agreement constitutes a final resolution of the dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

K. In the event that MDNR continues to dispute the position of the Administrator of EPA, MDNR reserves its rights to the extent provided by law including Sections 113(h), 121 and 310 of CERCLA, and Part XXX (Enforceability) of this Agreement to bring an action in federal court to seek relief regarding such dispute and to seek injunctive relief to preserve the dispute, pending resolution.

XII. EXTENSIONS

A. Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the DA shall be submitted in writing and shall

specify:

1. The timetable and deadline or the schedule that is sought to be extended;

2. the length of the extension sought;

3. the good cause(s) for the extension; and

4. any related timetable and deadline or schedule that would be affected if the extension were granted.

B. Good cause exists for an extension when sought in regard to:

1. An event of force majeure, as defined in Part XXXII of this Agreement;

2. a delay caused by another party's failure to meet any requirement of this agreement;

3. a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

4. a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

5. any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, the DA may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within seven days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and MDNR shall advise the DA in writing of their respective positions

on the request. Any failure by U.S. EPA and MDNR to respond within the 7-day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA or MDNR do not concur in the requested extension, they shall include in their statements of nonconcurrence an explanation of the basis for their positions.

E. If there is consensus among the Parties that the requested extension is warranted, the DA shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the DA may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the

timetable and deadline or schedule as most recently extended.

XIII. CREATION OF DANGER

A. In the event the EPA or MDNR determines that activities conducted pursuant to this Agreement are creating a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, the EPA or MDNR may direct DA to stop further implementation of work under this Agreement for such period of time as necessary to abate the danger.

B. Any Party directing the DA to stop work pursuant to this provision shall within 24 hours of doing so provide a written statement of the basis for its directing the work stoppage. DA shall have three business days from receipt of this written statement to request a review of the work stoppage. This request shall include a statement as to DA's basis for recommending that the work stoppage cease and as to possible measures to abate or mitigate the danger. Within 72 hours of an Army request for review, the EPA Division Director or appropriate MDNR official shall determine in writing whether continued work stoppage is necessary. This final decision shall be subject to Resolution of Disputes procedures.

C. Any such work stoppages may be a basis for modifying the schedule of activities affected by the work stoppage.

XIV. REPORTING

Throughout the course of these activities, DA shall submit to EPA and MDNR written quarterly progress reports, which shall include, at a minimum, the following:

1. A description of the actions completed during the

quarter towards compliance with this Agreement;

2. a description of all actions scheduled for completion during the quarter which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

3. copies of all data and sampling and test results and all other laboratory deliverables received by DA and completed pursuant to this Agreement during the quarter; and

4. a description of the actions which are scheduled for the following quarter.

These quarterly reports shall be due on or before the tenth day of the month following the quarter for which the report is submitted.

XV. MONITORING AND QUALITY ASSURANCE

A. In accordance with Part X of this Agreement, DA shall develop a Quality Assurance Project Plan (QAPP) for each Remedial Investigation, including investigations conducted for an Operable Unit, for review and comment by EPA and MDNR. The QAPPs shall be prepared in accordance with EPA Document QAMS-005/80 and applicable guidance as developed and provided by EPA and shall include but not be limited to: sampling methodology; sample storage and shipping methods; documentation; sampling and chain-of-custody procedures; calibration procedures; laboratory quality control/quality assurance procedures and frequency. DA shall use the quality assurance, quality control, and chain of custody procedures specified in the QAPPs throughout all field investiga-

tion, sample collection and laboratory analysis activities. The Army shall inform and obtain the approval of EPA and MDNR in planning all sampling and analysis.

B. In order to provide quality assurance and maintain quality control regarding all sample collection pursuant to this Agreement, DA shall obtain the approval of EPA and MDNR for methods deemed satisfactory to EPA and MDNR and shall submit all protocols used for sampling and analysis to EPA and MDNR for review and comment. The Army shall also ensure that the laboratory(s) utilized for analysis participate in the U.S. Army Toxic and Hazardous Materials Agency quality assurance/quality control program. Further evaluation by EPA and MDNR Quality Assurance Office personnel may entail, upon request by EPA or MDNR, the analysis of performance evaluation samples to demonstrate the quality of each laboratory's analytical data.

C. The DA shall also ensure that appropriate EPA and MDNR personnel or their authorized representatives will be allowed access to the laboratory(s) and personnel utilized by the DA in implementing this Agreement. Such access shall be for the purpose of validating sample analyses, protocols and procedures required by the Remedial Investigation and Quality Assurance Project Plan.

XVI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. DA shall make available to EPA and MDNR all results of sampling, tests and other data collection, including quality assurance documentation obtained by it, or on its behalf, with respect to the implementation of this Agreement, within thirty

(30) days of receipt of such results. This includes, but is not limited to, sampling of all areas known or suspected to have been contaminated by hazardous substances, including the LCAAP water supply wells, included in the remedial investigation. If quality assurance is not completed within thirty (30) days of the receipt of results, summarized raw data or results shall be submitted within the thirty (30) day period and quality assured data or results shall be submitted as soon as they become available.

B. At the request of EPA or MDNR, DA shall allow the Party making the request to collect split or duplicate samples of all samples collected pursuant to this Agreement. To the maximum extent practicable, DA shall notify EPA and MDNR at least fourteen (14) days prior to any sample collection. If it is not possible to provide fourteen (14) days advance notice, DA shall provide as much notice as possible of the date and time that samples will be collected. EPA and MDNR will make the results of all sampling, tests, or other data available to each other and to DA within thirty (30) days of receipt of such results.

XVII. CONFIDENTIAL BUSINESS INFORMATION

A. DA may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Agreement, in accord with Section 104(e)(7) of CERCLA. Results of environmental analysis shall not be claimed as confidential by the DA. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or

attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public without further notice to DA. EPA will, to the extent practical, honor claims of confidentiality received after the submittal of the information.

B. Information determined to be confidential by EPA pursuant to 40 CFR Part 2 shall be afforded the protection specified therein. Such information shall be reviewed by the MDNR Director for confidentiality pursuant to Sections 260.550 and 610.010 et seq., Revised Statutes of the State of Missouri, and any regulations promulgated thereunder, and treated accordingly.

XVIII. PROJECT MANAGERS

A. The following individuals are designated as Project Manager for the respective party:

For EPA:

Greg McCabe
Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone Number 913/236-2856

For DA:

Bill Melton
Lake City Army Ammunition Plant
Independence, Missouri 64051-0330
Telephone Number 816/796-7178

For MDNR:

Roy Hengerson
Division of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
Telephone Number 314/751-3176

All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted pursuant to this Agreement shall be directed to the designated Project Managers. To the maximum extent possible, all communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

B. The EPA and MDNR Project Managers shall have the authority to:

1. Take samples, request split samples of DA samples and ensure that work is performed properly and pursuant to EPA protocols as well as pursuant to the Attachments and plans incorporated into this Agreement;

2. observe all activities performed pursuant to this Agreement, take photographs or have photographs taken, and make

such other reports on the progress of the work as the Project Manager deems appropriate, subject to the limitations set forth in Part XIX, Access, of this Agreement;

3. review records, files and documents relevant to this agreement; and

4. recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

C. The DA Project Manager may recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

D. Any field modifications proposed under this Part by any Party must be approved orally by all (3) Project Managers to be effective. If agreement cannot be reached on the proposed additional work or modification to work, dispute resolution as set forth in Part XI may be used in addition to this Part. Within five (5) business days following a modification made pursuant to this Part, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Managers. The Parties recognize that modifications and corresponding changes to remedial investigation and response action contracts may necessitate extensions of timetables and deadlines.

E. The Project Manager for the DA shall be physically present on the site or reasonably available to supervise work performed at the site during implementation of the work performed pursuant to this Agreement and shall be available to EPA and MDNR for the pendency of this Agreement. The EPA and MDNR Project Managers need not be present at the Site and their absence from the Site shall not be cause for work stoppage.

F. Any party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change.

XIX. ACCESS

A. Subject to any statutory and regulatory requirements as may be necessary to protect national security, DA shall provide access to EPA and MDNR to all property upon which any activities are being conducted or have been conducted pursuant to this Agreement such that EPA and MDNR and their authorized representatives are able to enter and move freely about such property at all reasonable times for the purposes related to activities conducted pursuant to this Agreement, including, inter alia, the following:

1. Inspecting and copying records, files, photographs, operating logs, contracts and other documents relative to the implementation of this Agreement;

2. reviewing the status of activities being conducted pursuant to this Agreement;

3. collecting such samples or conducting such tests as

EPA or MDNR determines are necessary or desirable to monitor compliance with the terms of this Agreement or to protect the public health, welfare, or the environment;

4. using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Agreement; and

5. verifying data and other information submitted by DA pursuant to this Agreement.

B. The LCAAP shall provide an escort whenever EPA or MDNR require access to restricted areas of LCAAP for purposes consistent with the provisions of this Agreement. EPA and the State shall provide reasonable notice to the DA Project Manager to request any necessary escorts. EPA and MDNR shall not use any camera, sound recording or other electronic recording device at LCAAP without the permission of the DA Project Manager. The DA shall not unreasonably withhold such permission.

C. The rights to access by EPA and the State, granted in Paragraph A. of this section, shall be subject to those regulations as may be necessary to protect national security. Upon denying any aspect of access the DA shall provide an explanation within 48 hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner. The Parties agree that this Agreement is subject to CERCLA § 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

D. All Parties with access to LCAAP pursuant to this section

shall comply with all applicable health and safety plans.

E. To the extent that activities pursuant to this Agreement must be carried out on other than DA property, the DA shall use its best efforts to obtain access agreements from the owners which shall provide reasonable access for the DA, EPA, MDNR and their representatives. In the event that the DA is unable to obtain such access agreements, the DA shall promptly notify EPA and MDNR.

XX. RECORD PRESERVATION

DA shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in its possession, custody or control which relate in any way to work performed pursuant to this Agreement. After this seven-year period has lapsed, DA shall notify EPA at least thirty (30) calendar days prior to the destruction of any such document. DA shall make available the documents or copies of such documents, unless withholding is authorized and determined appropriate by law.

XXI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Agreement, DA is not released from liability, if any, for any actions beyond the terms of this Agreement taken by the EPA or MDNR with respect to the site. EPA and MDNR reserve the right to take any enforcement action pursuant to RCRA, CERCLA and/or any other available legal authority for relief including, but not

limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law or this Agreement.

B. EPA and MDNR reserve such rights as they may have to undertake response action(s) to address the release or threat of release of hazardous substances from the site at any time and, to the extent permitted by law, to seek reimbursement from DA thereafter for the costs incurred in so responding.

C. The DA reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any Party, or any other matter in any proceeding related or not related to this Agreement, which the DA might otherwise be entitled to raise or assert.

XXII. OTHER APPLICABLE LAWS

A. Except as otherwise provided in Part XXIII, below, with regard to permits, all actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

B. All reports, plans, specifications, and schedules submitted pursuant to this Agreement are, upon approval by EPA and MDNR, incorporated into this Agreement.

XXIII. PERMITS

A. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no Federal, State, or local permit shall be required for those portions of the response actions undertaken pursuant to

this Agreement which are conducted entirely on-site. Such on-site response actions must satisfy all applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit. For each response action proposed by DA which in the absence of § 121(e)(1) of CERCLA would require a permit, DA shall include the following information in the Feasibility Study report:

1. The identity of each permit which would otherwise be required;

2. the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit, including input received from MDNR in accordance with Section 121(d)(2)(A)(ii) of CERCLA;

3. a description of how the proposed response action will meet the standards, requirements, criteria or limitations which would be included in each such permit.

B. DA shall make timely and complete application or request for all permits, licenses or other authorizations necessary to implement those portions of any response actions required by this Agreement which are not conducted entirely on-site. Each work plan shall identify each such permit, license or authorization addressed therein by providing the following information:

1. The agency or instrumentality from whom the permit, license or authorization must be sought and the agency or instrumentality which would grant or issue the permit, license or authorization if not the same as the one from which it must be

sought;

2. the activity which would be the subject of the permit, license or authorization;

3. a description of the procedure to be followed in securing such permit, license or authorization, including the date by which an application must be filed and the anticipated duration of the permit, license or authorization.

C. If a permit which is necessary for implementation of this Agreement is not issued, or is issued or renewed in a manner which is materially inconsistent with the remedy selected pursuant to this Agreement, DA shall notify EPA and MDNR in writing of its intention to propose modifications to primary documents thereby affected in accordance with Paragraph X.J. of this Agreement. Notification by the DA of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by the DA of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, the DA shall submit to the EPA and MDNR its proposed modifications with an explanation of its reasons in support thereof. Such proposed modifications will be reviewed in accordance with Part X of this Agreement.

D. If DA submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA and MDNR may elect to delay review of the

proposed modifications until after such final determination is entered.

E. During any appeal of any permit required to implement this Agreement or during review of any of the DA's proposed modifications as provided in Subpart D above, the DA shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

F. Except as otherwise provided in this Agreement, under Federal law or doctrine of sovereign immunity, the DA shall comply with applicable State and Federal hazardous waste management requirements at the site.

XXIV. FIVE YEAR REVIEW

If a remedy is selected for the Site which results in any hazardous substances, pollutants or contaminants remaining at the Site, EPA shall, consistent with Section 121(c) of CERCLA, review the remedial action no less often than each five years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review it is the judgment of EPA and MDNR that additional action or modification of the remedial action is appropriate in accordance with Section 104 or 106 of CERCLA, then EPA and MDNR shall require the DA to implement such additional or modified action.

XXV. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be

construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. The EPA and MDNR shall not be held as a party to any contract entered into by the DA to implement the requirements of this Agreement.

C. Subject to Part VI, Statutory Compliance, this Agreement shall not restrict EPA or MDNR from taking any legal or response action for any matter not specifically part of the work covered by this Agreement.

XXVI. AMENDMENT OF THE AGREEMENT

This Agreement may be amended by the written agreement of all Parties hereto. Each such amendment shall be effective on the date such written agreement is signed by all Parties.

XXVII. PUBLIC PARTICIPATION

A. In accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, before adoption of any plan for remedial action pursuant to this Agreement, DA shall:

1. Publish in a local newspaper or newspapers of general circulation a notice and brief analysis of the proposed plan, including an explanation of the proposed plan and alternatives considered;

2. make such plan available to the public; and

3. provide a reasonable opportunity for a public meeting at or near the facility regarding the proposed plan and any proposed findings under Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

B. Before commencement of any remedial action, DA shall publish a notice of the final remedial action plan adopted and shall make available to the public the plan, a discussion of any significant changes and the reasons for the changes in the proposed plan, and a response to each significant comment, criticism, and new data submitted during the public comment on the proposed plan.

C. If the remedial action taken differs in any significant respects from the final plan which was adopted, DA shall publish an explanation of the significant differences and the reasons such changes were made.

D. The DA agrees to implement the Community Relations Plan (CRP) in a manner consistent with Section 117 of CERCLA, the NCP, EPA guidelines set forth in EPA's Community Relations Handbook, and any modifications thereto.

E. Any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least two (2) business days before the issuance of such press release and of any subsequent changes prior to release.

F. Within thirty (30) days of the effective date of this

Agreement, the DA shall establish and maintain an Administrative Record, which will include an index of all documents contained therein, at or near the Site in accordance with Section 113(k) of CERCLA. The Administrative Record shall be established and maintained in accordance with current and future EPA policy and guidelines. A copy of each document placed in the Administrative Record will be provided to the EPA and MDNR as they are generated. An updated index of the documents in the Administrative Record shall be provided to EPA and MDNR on at least a quarterly basis.

G. DA shall follow the public participation requirements of CERCLA Section 113(k) and comply with any guidance and/or regulations promulgated by EPA with respect to each Section.

XXVIII. PUBLIC COMMENT ON AGREEMENT

A. Within fifteen (15) days of the date EPA receives a fully executed copy of this Agreement, EPA shall announce the availability of the Agreement to the public for review and comment and shall accept comments from the public for a period of forty-five (45) days after such announcement. Upon completion of the public comment period, EPA shall promptly provide copies of all comments received to DA and MDNR.

B. Upon completion of the public comment period, each of the Parties shall review the comments and shall determine either that:

1. The Agreement should be made effective in its present form; or

2. modification of the Agreement is necessary.

C. Any Party that determines modification of the Agreement is necessary shall provide a written request for modification to each of the other Parties. This request for modification shall be made within twenty (20) days of the date that Party received copies of the comments from EPA, or, in the event EPA requests modification, within twenty (20) days of the date copies of the comments were provided to the other Parties. The request for modification shall include:

1. A statement of the basis for determining the modification is necessary and

2. proposed revisions to the Agreement addressing the modification.

D. If no request for modification is made within the time period specified above, this Agreement shall be made effective in its present form in accordance with Part XXXVI hereof.

E. If any Party requests modification of the Agreement as provided above, the Parties shall meet to discuss the proposed modification. If the Parties agree on the modification, the Agreement shall be revised, in writing, in accordance with the agreed upon modification. The revised Agreement shall be signed by representatives of each Party and shall be made effective in accordance with Part XXXVI hereof. If the Parties are unable to agree upon such modifications, any Party reserves the right to withdraw from the Agreement. Before any Party exercises its right to withdraw from the Agreement, it shall make its SEC representative, as identified in Paragraph XI.E. hereof, avail-

able to meet with the other Parties' SEC representatives to discuss the withdrawal.

F. In the event of significant modification of the Agreement after public comment, notice procedures of Sections 117 of CERCLA and 211 of SARA shall be followed and a responsiveness summary published by the EPA.

XXIX. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the DA shall propose deadlines for completion of the following draft primary documents:

1. Conceptual Program Plan
2. Remedial Investigation Work Plan, including Sampling and Analysis Plan and QAPP
3. Remedial Investigation Report including a Risk Assessment
4. Feasibility Study Work Plan
5. Feasibility Study Report
6. Proposed Plan
7. Record of Decision
8. Operable Unit Work Plans and Reports, including the Northeast Corner (Areas 11, 16, 17, and 18 in the Remedial Investigation Technical Report) Operable Unit Workplan and Report, and the Area 9 (mercurous nitrate storage area and zinc cyanide sludge drying bed) Workplan and Report

Within fifteen (15) days of receipt, EPA, in conjunction

with MDNR, shall review and provide comments to the DA regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the DA shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XI of this Agreement.

The final deadlines established pursuant to this Paragraph shall be published by U.S. EPA, in conjunction with MDNR.

B. Within twenty-one (21) days of issuance of the Record of Decision, the DA shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in Paragraph B. above.

C. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XII of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the Remedial Investigation.

XXX. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

2. all timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

3. all terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. any final resolution of a dispute pursuant to Part XI of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. Nothing in this Agreement shall be construed as a restriction or waiver of any rights the U.S. EPA or MDNR may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The DOD does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

D. The Parties agree to exhaust their rights under Part XI, Resolution of Disputes, prior to exercising any rights to judicial review that they may have.

E. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

XXXI. STIPULATED PENALTIES

A. In the event that the DA fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against the DA. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that the DA has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify the DA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the DA shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The DA shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

C. The annual reports required by Section 120(e)(5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against the DA under this Agreement, each of the following:

1. The facility responsible for the failure;

2. a statement of the facts and circumstances giving rise to the failure;

3. a statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

4. a statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

5. the total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

E. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA.

F. This Part shall not affect the DA's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XII of this Agreement.

G. Nothing in this Agreement shall be construed to render any officer or employee of the DA personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

H. In the event that the Army fails to pay any stipulated penalty as provided hereunder based upon the lack of appropriated or authorized funds, the Army shall do the following:

1. Inform EPA and MDNR of the specific basis for failure to pay; and,

2. request funding for such stipulated penalties by submitting requests for appropriation and authorization of funds for the payment of the penalties in the first annual budget request following the assessment through the Department of Defense budgetary process.

XXXII. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents

the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the DA; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the DA shall have made timely request for such funds as part of the budgetary process as set forth in Part XXXII of his Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

XXXIII. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of the DA arising under this Agreement will be fully funded. The DA agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations

under this Agreement.

B. In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(e)(5)(B), the DOD shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the DA established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

D. If appropriated funds are not available to fulfill the DA's obligations under this Agreement, U.S. EPA and MDNR reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the DA will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense

appropriation be inadequate in any year to meet the total DA CERCLA implementation requirements, the DOD shall employ and the DA shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of U.S. EPA and the states.

XXXIV. REIMBURSEMENT OF STATE EXPENSES

A. DOD is in the process of developing a state memorandum of agreement (SMOA) to address reimbursement of state costs at National Priority List (NPL) and non-NPL sites. It is intended that Federal Facilities Agreements in the future would reference the SMOA as the device covering this issue. Although provisions below shall govern cost reimbursement until the SMOA is negotiated with the State of Missouri, the State agrees to reopen the issue of cost reimbursement under this Agreement at that time.

B. Pursuant to its authority under 10 U.S.C. § 2701(d) and subject to the limitations in this part and Part XXXIII, Funding, the Army agrees to request funding from Congress and to reimburse the MDNR for specified services provided to LCAAP in execution of this Agreement pursuant to paragraph 3 of this Part. In the event that MDNR contracts for services that are of the same type that it performs within the agency, the reimbursable costs for that service shall be limited to the amount that MDNR would have expended if it had performed the service itself. Neither interest nor profit shall be payable. MDNR records shall be maintained in accordance with generally accepted accounting princi-

ples and in a manner substantially equivalent to 49 C.F.R. § 52-230-4 Accounting Standards (Sep. 87), and 49 C.F.R. § 52-230-4, Administration of Cost Accounting Standards (Sep. 87).

C. Services provided under this paragraph include the following types of assistance for response actions at LCAAP:

1. Timely technical review and substantive comment on reports or studies which LCAAP prepares in support of its response actions and submits to the State.

2. Identification and explanation of State requirements applicable to military installations in performing response actions, especially state applicable or relevant and appropriate requirements (ARARS).

3. Field visits to ensure cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with conditions agreed upon between the State and LCAAP.

4. Support and assistance to LCAAP in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

5. Participation in the review and comment functions of the LCAAP Technical Review Committee.

D. DA agrees to reimburse the MDNR for all reasonable costs it incurs in performing the services listed in the preceding paragraph, provided that the services are performed after the effective date of the Agreement. Total reimbursable costs payable during each of the first two Federal fiscal years following

the effective date of this Agreement shall not exceed $75,000.00.

E. A billing shall be presented to LCAAP by MDNR within thirty (30) days after the end of each Federal Government fiscal quarter. The accounting shall include all reimbursable costs incurred during the previous Federal fiscal quarter. Such billing shall be accompanied by cost summaries which directly relate costs to specified services. The State shall allow the DA to audit the records used to develop the billing. The Army will, upon timely receipt of properly presented and documented invoices, pay the allowable portion of all such invoices within ninety (90) days of proper presentation.

F. The MDNR shall maintain adequate accounting records sufficient to identify all expenses related to this Agreement. The MDNR agrees to maintain these financial records for a period of ten years from the termination date of this Agreement as specified in Part XX, Record Preservation, of this Agreement. The MDNR agrees to provide the Army or its designated representative reasonable access to all financial records for the purpose of audit for a period of ten years from the termination date of this Agreement.

G. As of 1 April of each year, MDNR shall submit to the Army a budget estimate for projected costs for activities reimbursable under this Agreement for the following Federal fiscal year.

H. The provisions of this Section shall be reviewed by the Parties two years after this Agreement takes effect. The purpose of this review shall be to determine if it would be equitable to

change the annual amount available for payment of reimbursable costs to MDNR. Any such change is not subject to the dispute resolution procedures of Part XI, but will be resolved in accordance with the procedures set forth in this paragraph. Neither the Army nor MDNR shall unreasonably withhold consent to such a change.

I. In the event that the Army believes that costs set forth in the accounting information described above are not reasonable, properly allocable to the services delineated in paragraph three of this Agreement, or are otherwise in violation of this Agreement; or if the Army and the MDNR have any other dispute concerning cost reimbursement, including any disagreement over a cap over future annual or lifetime cost reimbursement, LCAAP may challenge the amount to be paid to the MDNR through the procedure described below:

1. The LCAAP Project Manager and the MDNR Project Manager shall be the primary points of contact to coordinate resolution of disputes arising under this paragraph.

2. If the LCAAP Project Manager and the MDNR Project Manager are unable to agree, the matter shall be referred to the installation commander or his designated representative and the chief of the designated program office of MDNR as soon as practicable, but in any event, within five (5) working days.

3. Should they be unable to agree within ten (10) working days, the matter shall be elevated to the MDNR Director of the Division of Environmental Quality, and the Deputy Assistant

Secretary of the Army (Environment, Safety and Occupational Health) OASA (I & L).

4. It is the intention of the Army and MDNR that all disputes shall be resolved in this manner. The use of alternative dispute resolution is encouraged. In the event the MDNR Director of the Division of Environmental Quality and the DESOH, ASA(I&L), are unable to resolve a dispute, MDNR retains all of its legal and equitable remedies to recover its costs.

XXXV. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the DA of written notice from EPA and the MDNR Director that the DA has demonstrated, to the satisfaction of the EPA and MDNR Director, that all the terms of this Agreement have been completed.

XXXVI. EFFECTIVE DATE

This Agreement is effective upon issuance of a notice to the Parties by EPA following implementation of Part XXVIII of this Agreement.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For the United States Department of the Army:

21 JUL 89
Date

David A. Brown
Lieutenant Colonel
Commander
Lake City Army Ammunition Plant

8/28/89
Date

Lewis D. Walker
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational
Health) OASA (I & L).

For the Missouri Department of Natural Resources:

9/21/89
Date

G. Tracy Mehan, III
Director, Missouri Department of
Natural Resources

For the U.S. Environmental Protection Agency

9-28-89
Date

Morris Kay
Regional Administrator
U.S. EPA, Region VII

9/27/89
Date

Delegated to Regional Administrator
Jonathan Z. Cannon
Acting Assistant Administrator for
Solid Waste and Emergency Response